



General Assembly

January Session, 2009

Raised Bill No. 6355

LCO No. 2694

02694_____INS

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

AN ACT REQUIRING PURE COMMUNITY RATING FOR HEALTH INSURANCE FOR SMALL EMPLOYERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-567 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2010*):

3 Health insurance plans and insurance arrangements covering small
4 employers and insurers and producers marketing such plans and
5 arrangements shall be subject to the following provisions:

6 (1) (A) Any such plan or arrangement shall be renewable with
7 respect to all eligible employees or dependents at the option of the
8 small employer, policyholder or contractholder, as the case may be,
9 except: (i) For nonpayment of the required premiums by the small
10 employer, policyholder or contractholder; (ii) for fraud or
11 misrepresentation of the small employer, policyholder or
12 contractholder or, with respect to coverage of individual insured, the
13 insureds or their representatives; (iii) for noncompliance with plan or
14 arrangement provisions; (iv) when the number of insureds covered
15 under the plan or arrangement is less than the number of insureds or

16 percentage of insureds required by participation requirements under
17 the plan or arrangement; or (v) when the small employer, policyholder
18 or contractholder is no longer actively engaged in the business in
19 which it was engaged on the effective date of the plan or arrangement.

20 (B) Renewability of coverage may be effected by either continuing in
21 effect a plan or arrangement covering a small employer or by
22 substituting upon renewal for the prior plan or arrangement the plan
23 or arrangement then offered by the carrier that most closely
24 corresponds to the prior plan or arrangement and is available to other
25 small employers. Such substitution shall only be made under
26 conditions approved by the commissioner. A carrier may substitute a
27 plan or arrangement as stated above only if the carrier effects the same
28 substitution upon renewal for all small employers previously covered
29 under the particular plan or arrangement, unless otherwise approved
30 by the commissioner. The substitute plan or arrangement shall be
31 subject to the rating restrictions specified in this section on the same
32 basis as if no substitution had occurred, except for an adjustment
33 based on coverage differences.

34 (C) Notwithstanding the provisions of this subdivision, any such
35 plan or arrangement, or any coverage provided under such plan or
36 arrangement may be rescinded for fraud, material misrepresentation
37 or concealment by an applicant, employee, dependent or small
38 employer.

39 (D) Any individual who was not a late enrollee at the time of his or
40 her enrollment and whose coverage is subsequently rescinded shall be
41 allowed to reenroll as of a current date in such plan or arrangement
42 subject to any preexisting condition or other provisions applicable to
43 new enrollees without previous coverage. On and after the effective
44 date of such individual's reenrollment, the small employer carrier may
45 modify the premium rates charged to the small employer for the
46 balance of the current rating period and for future rating periods, to
47 the level determined by the carrier as applicable under the carrier's

48 established rating practices had full, accurate and timely underwriting
49 information been supplied when such individual initially enrolled in
50 the plan. The increase in premium rates allowed by this provision for
51 the balance of the current rating period shall not exceed twenty-five
52 per cent of the small employer's current premium rates. Any such
53 increase for the balance of said current rating period shall not be
54 subject to the rate limitation specified in subdivision (6) of this section.
55 The rate limitation specified in this section shall otherwise be fully
56 applicable for the current and future rating periods. The modification
57 of premium rates allowed by this subdivision shall cease to be
58 permitted for all plans and arrangements on the first rating period
59 commencing on or after July 1, 1995.

60 (2) Except in the case of a late enrollee who has failed to provide
61 evidence of insurability satisfactory to the insurer, the plan or
62 arrangement may not exclude any eligible employee or dependent
63 who would otherwise be covered under such plan or arrangement on
64 the basis of an actual or expected health condition of such person. No
65 plan or arrangement may exclude an eligible employee or eligible
66 dependent who, on the day prior to the initial effective date of the plan
67 or arrangement, was covered under the small employer's prior health
68 insurance plan or arrangement pursuant to workers' compensation,
69 continuation of benefits pursuant to federal extension requirements
70 established by the Consolidated Omnibus Budget Reconciliation Act of
71 1985 (P.L. 99-2721, as amended from time to time) or other applicable
72 laws. The employee or dependent must request coverage under the
73 new plan or arrangement on a timely basis and such coverage shall
74 terminate in accordance with the provisions of the applicable law.

75 (3) (A) For rating periods commencing on or after October 1, 1993,
76 and prior to July 1, 1994, the premium rates charged or offered for a
77 rating period for all plans and arrangements may not exceed one
78 hundred thirty-five per cent of the base premium rate for all plans or
79 arrangements.

80 (B) For rating periods commencing on or after July 1, 1994, and prior
81 to July 1, 1995, the premium rates charged or offered for a rating
82 period for all plans or arrangements may not exceed one hundred
83 twenty per cent of the base premium rate for such rating period. The
84 provisions of this subdivision shall not apply to any small employer
85 who employs more than twenty-five eligible employees.

86 (4) For rating periods commencing on or after October 1, 1993, and
87 prior to July 1, 1995, the percentage increase in the premium rate
88 charged to a small employer, who employs not more than twenty-five
89 eligible employees, for a new rating period may not exceed the sum of:

90 (A) The percentage change in the base premium rate measured from
91 the first day of the prior rating period to the first day of the new rating
92 period;

93 (B) An adjustment of the small employer's premium rates for the
94 prior rating period, and adjusted pro rata for rating periods of less
95 than one year, due to the claim experience, health status or duration of
96 coverage of the employees or dependents of the small employer, such
97 adjustment (i) not to exceed ten per cent annually for the rating
98 periods commencing on or after October 1, 1993, and prior to July 1,
99 1994, and (ii) not to exceed five per cent annually for the rating periods
100 commencing on or after July 1, 1994, and prior to July 1, 1995; and

101 (C) Any adjustments due to change in coverage or change in the
102 case characteristics of the small employer, as determined from the
103 small employer carrier's applicable rate manual.

104 (5) (A) With respect to plans or arrangements issued on or after
105 ~~[July 1, 1995]~~ January 1, 2010, the premium rates charged or offered to
106 small employers shall be established on the basis of a community rate,
107 adjusted to reflect one or more of the following classifications:

108 [(i) Age, provided age brackets of less than five years shall not be
109 utilized;

110 (ii) Gender;]

111 [(iii)] (i) Geographic area, provided an area smaller than a county
112 shall not be utilized;

113 [(iv)] (ii) Industry, provided the rate factor associated with any
114 industry classification shall not vary from the arithmetic average of the
115 highest and lowest rate factors associated with all industry
116 classifications by greater than fifteen per cent of such average, and
117 provided further, the rate factors associated with any industry shall
118 not be increased by more than five per cent per year;

119 [(v)] (iii) Group size, provided the highest rate factor associated
120 with group size shall not vary from the lowest rate factor associated
121 with group size by a ratio of greater than 1.25 to 1.0;

122 [(vi)] (iv) Administrative cost savings resulting from the
123 administration of an association group plan or a plan written pursuant
124 to section 5-259, provided the savings reflect a reduction to the small
125 employer carrier's overall retention that is measurable and specifically
126 realized on items such as marketing, billing or claims paying functions
127 taken on directly by the plan administrator or association, except that
128 such savings may not reflect a reduction realized on commissions;

129 [(vii)] (v) Savings resulting from a reduction in the profit of a carrier
130 who writes small business plans or arrangements for an association
131 group plan or a plan written pursuant to section 5-259 provided any
132 loss in overall revenue due to a reduction in profit is not shifted to
133 other small employers; and

134 [(viii)] (vi) Family composition, provided the small employer carrier
135 shall utilize only one or more of the following billing classifications: (I)
136 Employee; (II) employee plus family; (III) employee and spouse; (IV)
137 employee and child; (V) employee plus one dependent; and (VI)
138 employee plus two or more dependents.

139 (B) The small employer carrier shall quote premium rates to small

140 employers after receipt of all demographic rating classifications of the
141 small employer group. No small employer carrier may inquire
142 regarding health status or claims experience of the small employer or
143 its employees or dependents prior to the quoting of a premium rate.

144 (C) The provisions of subparagraphs (A) and (B) of this subdivision
145 shall apply to plans or arrangements issued on or after [July 1, 1995]
146 January 1, 2010. [The provisions of subparagraphs (A) and (B) of this
147 subdivision shall apply to plans or arrangements issued prior to July 1,
148 1995, as of the date of the first rating period commencing on or after
149 that date, but no later than July 1, 1996.]

150 (6) For any small employer plan or arrangement on which the
151 premium rates for employee and dependent coverage or both, vary
152 among employees, such variations shall be based solely on [age and
153 other] demographic factors permitted under subparagraph (A) of
154 subdivision (5) of this section and such variations may not be based on
155 age, gender, health status, claim experience [,] or duration of coverage
156 of specific enrollees. Except as otherwise provided in subdivision (1) of
157 this section, any adjustment in premium rates charged for a small
158 employer plan or arrangement to reflect changes in case characteristics
159 prior to the end of a rating period shall not include any adjustment to
160 reflect the age, gender, health status, medical history or medical
161 underwriting classification of any new enrollee for whom coverage
162 begins during the rating period.

163 (7) For rating periods commencing prior to July 1, 1995, in any case
164 where a small employer carrier utilized industry classification as a case
165 characteristic in establishing premium rates, the rate factor associated
166 with any industry classification shall not vary from the arithmetical
167 average of the highest and lowest rate factors associated with all
168 industry classifications by greater than fifteen per cent of such average.

169 (8) Differences in base premium rates charged for health benefit
170 plans by a small employer carrier shall be reasonable and reflect
171 objective differences in plan design, not including differences due to

172 the nature of the groups assumed to select particular health benefit
173 plans.

174 (9) For rating periods commencing prior to July 1, 1995, in any case
175 where an insurer issues or offers a policy or contract under which
176 premium rates for a specific small employer are established or
177 adjusted in part based upon the actual or expected variation in claim
178 costs or actual or expected variation in health conditions of the
179 employees or dependents of such small employer, the insurer shall
180 make reasonable disclosure of such rating practices in solicitation and
181 sales materials utilized with respect to such policy or contract.

182 (10) If a small employer carrier denies coverage as requested to a
183 small employer that is self-employed, the small employer carrier shall
184 promptly offer such small employer the opportunity to purchase a
185 small employer health care plan. If a small employer carrier or any
186 producer representing that carrier fails, for any reason, to offer
187 coverage as requested by a small employer that is self-employed, that
188 small employer carrier shall promptly offer such small employer an
189 opportunity to purchase a small employer health care plan.

190 (11) No small employer carrier or producer shall, directly or
191 indirectly, engage in the following activities:

192 (A) Encouraging or directing small employers to refrain from filing
193 an application for coverage with the small employer carrier because of
194 the health status, claims experience, industry, occupation or
195 geographic location of the small employer, except the provisions of
196 this subparagraph shall not apply to information provided by a small
197 employer carrier or producer to a small employer regarding the
198 carrier's established geographic service area or a restricted network
199 provision of a small employer carrier; or

200 (B) Encouraging or directing small employers to seek coverage from
201 another carrier because of the health status, claims experience,
202 industry, occupation or geographic location of the small employer.

203 (12) No small employer carrier shall, directly or indirectly, enter into
204 any contract, agreement or arrangement with a producer that provides
205 for or results in the compensation paid to a producer for the sale of a
206 health benefit plan to be varied because of the health status, claims
207 experience, industry, occupation or geographic area of the small
208 employer. A small employer carrier shall provide reasonable
209 compensation, as provided under the plan of operation of the
210 program, to a producer, if any, for the sale of a special or a small
211 employer health care plan. No small employer carrier shall terminate,
212 fail to renew or limit its contract or agreement of representation with a
213 producer for any reason related to the health status, claims experience,
214 occupation, or geographic location of the small employers placed by
215 the producer with the small employer carrier.

216 (13) No small employer carrier or producer shall induce or
217 otherwise encourage a small employer to separate or otherwise
218 exclude an employee from health coverage or benefits provided in
219 connection with the employee's employment.

220 (14) Denial by a small employer carrier of an application for
221 coverage from a small employer shall be in writing and shall state the
222 reasons for the denial.

223 (15) No small employer carrier or producer shall disclose (A) to a
224 small employer the fact that any or all of the eligible employees of such
225 small employer have been or will be reinsured with the pool, or (B) to
226 any eligible employee or dependent the fact that he has been or will be
227 reinsured with the pool.

228 (16) If a small employer carrier enters into a contract, agreement or
229 other arrangement with another party to provide administrative,
230 marketing or other services related to the offering of health benefit
231 plans to small employers in this state, the other party shall be subject
232 to the provisions of this section.

233 (17) The commissioner may adopt regulations₂ in accordance with

234 the provisions of chapter 54, setting forth additional standards to
235 provide for the fair marketing and broad availability of health benefit
236 plans to small employers.

237 (18) Each small employer carrier shall maintain at its principal place
238 of business a complete and detailed description of its rating practices
239 and renewal underwriting practices, including information and
240 documentation that demonstrates that its rating methods and practices
241 are based upon commonly accepted actuarial assumptions and are in
242 accordance with sound actuarial principles. Each small employer
243 carrier shall file with the commissioner annually, on or before March
244 fifteenth, an actuarial certification certifying that the carrier is in
245 compliance with this part and that the rating methods have been
246 derived using recognized actuarial principles consistent with the
247 provisions of sections 38a-564 to 38a-573, inclusive. Such certification
248 shall be in a form and manner and shall contain such information, as
249 determined by the commissioner. A copy of the certification shall be
250 retained by the small employer carrier at its principle place of business.
251 Any information and documentation described in this subdivision but
252 not subject to the filing requirement shall be made available to the
253 commissioner upon his request. Except in cases of violations of
254 sections 38a-564 to 38a-573, inclusive, the information shall be
255 considered proprietary and trade secret information and shall not be
256 subject to disclosure by the commissioner to persons outside of the
257 department except as agreed to by the small employer carrier or as
258 ordered by a court of competent jurisdiction.

259 (19) The commissioner may suspend all or any part of this section
260 relating to the premium rates applicable to one or more small
261 employers for one or more rating periods upon a filing by the small
262 employer carrier and a finding by the commissioner that either the
263 suspension is reasonable in light of the financial condition of the
264 carrier or that the suspension would enhance the efficiency and
265 fairness of the marketplace for small employer health insurance.

266 (20) For rating periods commencing prior to July 1, 1995, a small
267 employer carrier shall quote premium rates to any small employer
268 within thirty days after receipt by the carrier of such employer's
269 completed application.

270 (21) Any violation of subdivisions (10) to (16), inclusive, and any
271 regulations established under subdivision (17) of this section shall be
272 an unfair and prohibited practice under sections 38a-815 to 38a-830,
273 inclusive.

274 (22) (A) With respect to plans or arrangements issued pursuant to
275 subsection (i) of section 5-259, at the option of the Comptroller, the
276 premium rates charged or offered to small employers purchasing
277 health insurance shall not be subject to this section, provided (i) the
278 plan or plans offered or issued cover such small employers as a single
279 entity and cover not less than three thousand employees on the date
280 issued, (ii) each small employer is charged or offered the same
281 premium rate with respect to each employee and dependent, and (iii)
282 the plan or plans are written on a guaranteed issue basis.

283 (B) With respect to plans or arrangements issued by an association
284 group plan, at the option of the administrator of the association group
285 plan, the premium rates charged or offered to small employers
286 purchasing health insurance shall not be subject to this section,
287 provided (i) the plan or plans offered or issued cover such small
288 employers as a single entity and cover not less than three thousand
289 employees on the date issued, (ii) each small employer is charged or
290 offered the same premium rate with respect to each employee and
291 dependent, and (iii) the plan or plans are written on a guaranteed issue
292 basis. In addition, such association group (I) shall be a bona fide group
293 as set forth in the Employee Retirement and Security Act of 1974, (II)
294 shall not be formed for the purposes of fictitious grouping, as defined
295 in section 38a-827, and (III) shall not issue any plan that shall cause
296 undue disruption in the insurance marketplace, as determined by the
297 commissioner.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>January 1, 2010</i>	38a-567
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Statement of Purpose:

To exclude age and gender from classifications that may be used to adjust the base community rate for health insurance premiums and rates offered to small employers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]